

**BOARD OF APPEALS CASE NO. 4884**

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**BEFORE THE**

**APPLICANT: Richard & Geraldine Stotler**

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**ZONING HEARING EXAMINER**

**REQUEST: Variances to create two  
panhandle lots and reduce panhandle  
width to 6.25 feet in an R2 District;  
420 Foster Branch Road, Joppa**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 1/27/99 & 2/3/99**

**HEARING DATE: May 19, 1999**

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**Record: 1/29/99 & 2/5/99**

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### **ZONING HEARING EXAMINER'S DECISION**

The Applicants, Richard and Geraldine Stotler, appeared before the Hearing Examiner requesting a variance to Section 267-22(G)(1) of the Harford County Code, to allow two panhandle lots in an R2 District and a variance to Section 267-22(G)(4) to reduce the existing 12.5 foot panhandle lot width to 6.25 feet in order to create the additional lot.

The subject parcel is located at 420 Foster Branch Road in the First Election District. The parcel is identified as Parcel No. 67, in Grid 1-B, on Tax Map 69. The parcel contains 4.375 acres, m/l, all of which is zoned R2.

The first witness to testify was Tory Pierce, who was accepted as an expert in the field of civil engineering and zoning. Mr. Pierce testified the Applicants are requesting a variance to allow more than one lot on a panhandle and an additional variance to reduce the minimum required panhandle width to 6.25 feet. Mr. Pierce said that, in addition to a 12.5 foot fee simple strip accessing the Stotler property to Foster Branch Road, the Stotler's were also granted an easement upon an existing driveway from their property to Foster Branch Road, which easement is approximately 12 feet wide. He explained that the result is recorded access (although not all fee simple) to Foster Branch in the amount of 24.5 feet. The easement granted the Applicants was admitted into evidence as Exhibit No. 11.

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Mr. Pierce went on to testify that the property is unique in that it is irregularly shaped and is a panhandle lot with only 12.5 feet of fee simple frontage on Foster Branch Road, but that the property enjoys the additional 12 feet of easement frontage. He testified that the literal enforcement of the Code would result in practical difficulty to the Stotlers in that they have actual recorded access to over 24.5 feet to a County road, but would be unable to subdivide their property because only 12.5 feet is in fee simple. He testified that the R2 zoning on the subject property would allow in excess of 24 units on the Stotler property and that they are seeking only to create one additional lot. Mr. Pierce testified that this one additional lot would not have an adverse impact on the adjoining properties, particularly in light of the heavy density that could be created under the Zoning Code. Mr. Pierce testified that the Stotler property could be developed as a conventional open space development at a density of 4.5 units to the acre and annexed into the adjoining Joppa Woods subdivision, which is served by public water and sewer. Mr. Pierce then reviewed the "Limitations, Guides and Standards" set forth in Section 267-9(l) and determined that the Applicants would not violate any of these standards.

On cross-examination, the People's Counsel presented Mr. Pierce with a Board of Appeals case regarding granting further panhandles 3.3 feet wide. On redirect, Mr. Pierce testified the issued raised in the zoning case referred to by the People's Counsel was subsequently resolved by subdivision plat. Applicants' Exhibit No. 12 was admitted into evidence which was a plat recorded among the Land Records of Harford County in Plat Book 81, Folio 16. Mr. Pierce said the net effect was to create a 30 foot wide right-of-way along Foster Branch Road, which allows everyone along the road to access Foster Branch with the sole exception of the 12.5 foot fee simple strip owned by the Applicants. Mr. Pierce said the previous access requiring 3.3 foot strips had been eliminated because all property owners have access to the 30 foot easement. Mr. Pierce said that he had not done a title search, but that the plat admitted into evidence as Exhibit No. 12 and the deed admitted into evidence as Exhibit No. 13 established the 30 foot right-of-way along Foster Branch Road.

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**Mr. Richard Stotler , the Applicant, testified that he has lived on the property for 21 years and that he was willing to abide by a condition that the lot would be subdivided only one more time. Mr. Stotler also testified he would be willing to create a common drive agreement to serve his existing lot and the new lot which he seeks to create.**

**Mr. Thomas Beall testified that he is the owner of Lot 2 containing approximately 2 acres and has lived on the property for approximately 16 years. Mr. Beall testified that Foster Branch Road is a County road and, although the County has done some maintenance on the driveway, the driveway is not owned by the County. Mr. Beall testified that the driveway currently used by the Stotlers is on property which is owned by Mr. Beall and his wife in fee simple (subject, however, to the easement previously testified to by Mr. Pierce). Mr. Beall testified that Harford County paved the driveway and that he is concerned about increased traffic and the heavy equipment that would travel on the driveway to construct a new home. He was also concerned that he may be responsible to repair the driveway in the event it becomes damaged by equipment during construction.**

**Mrs. Patricia Beall testified that she is concerned about an increase in traffic and loss of privacy if another lot is created. She also testified that there is a visibility problem on the driveway. On cross-examination, Mrs. Beall testified that she was not aware that the Stotlers were granted an easement across her property.**

**The Staff Report of the Department of Planning and Zoning recommends conditional approval and provides:**

**“Due to the unusual configuration of the property and the limited frontage, the only practical way of subdividing the parcel is by using panhandles or in-fee strips of land to the main area of the lot. Based on the circumstances, it appears that the Applicants can adequately justify the requested variances. The variances requesting the additional panhandle lot and the panhandle width should not adversely impact the intent of the Code and/or the surrounding neighborhood.”**

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### **CONCLUSION:**

The Applicants are requesting a variance to Section 267-22 (G)(1) of the Harford County Code, to allow two panhandle lots in a residential district and a variance to Section 267-22(G)(4) to reduce the required 12.5 foot panhandle width to 6.25 feet in order to create the additional lot.

Section 267-22(G)(1) and (4) provide:

**Panhandle-lot requirements.** Panhandle lots shall be permitted for agricultural and residential uses, to achieve better use of irregularly shaped parcels, to avoid development in areas with environmentally sensitive features or to minimize access to collector or arterial roads, subject to the following requirements:

- (1) Except in Agricultural and Rural Residential Districts, with regard to any parcel, as it existed on September 1, 1982, not more than one (1) lot or five percent (5%) of the lots intended for detached dwellings, whichever is greater, and not more than ten percent (10%) of the lots intended for attached dwellings may be panhandle lots.
- (4) Groups not exceeding four (4) lots may have two (2) lots on panhandles in accordance with the following criteria. Panhandle lots and subdivisions shall have, as a minimum, the following width:
  - (a) Single panhandles: twenty-five (25) feet.
  - (b) Double panhandles: twelve and one-half (12½) feet each, for a total of twenty-five (25) feet.

In Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974), the Court of Special Appeals noted the distinction between a use variance, which changes the character of the zoning district and where a more difficult burden of proving “undue hardship”, and an area variance where there is a lesser burden of proving practical difficulty.

To prove practical difficulty for an area variance, the following criteria must be met.

1. Whether strict compliance with the requirements would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

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2. Whether a grant of the variance applied for would do substantial justice to the Applicant as well as other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief....
3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

The variance process is at least a two-step sequential process. Cromwell v. Ward, 102 Md. App. 691 (1995). The first step requires a finding that the property is unique. The second step is to determine whether or not practical difficulty exists in accordance with the standards of Anderson v. Board of Appeals, Town of Chesapeake Beach, *supra*. Mr. Pierce testified that the property was unique. He testified that the lot was an irregularly shaped panhandle lot and that, most importantly, the property was unique because in addition to the 12.5 foot fee simple strip providing access to the road, the property also enjoyed a 12 foot easement providing access to the road, which allows the property to conform with the spirit and intent of the Zoning Code, even though the strip is not in fee simple. It is also important to note that neither protestant offered any testimony that the Applicants' property was not unique.

With respect to practical difficulty, it is clear that strict compliance with the panhandle requirement would unreasonable prevent the use of the property for a permitted purpose and render conformance unnecessarily burdensome. Subdivision is a purpose permitted the Applicants under the Code. In fact, based on Mr. Pierce's uncontradicted testimony, the property may be subdivided into as many as twenty lots. The Applicants, however, seek to create one additional lot for a total of two lots on the entire parcel. Mr. Stotler did testify that he would be willing to a condition of approval that the property shall not be further subdivided. unless he secures additional road frontage. Therefore, strict compliance with the Code would prevent the subdivision of one more lot where the property could actually yield a total of 20 additional lots. The strict compliance would, therefore, unreasonably prevent the use of the property for a permitted purpose.

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No lesser relaxation of the panhandle requirement would give the Applicant substantial relief and allow the creation of an additional lot. With respect to the third criteria for practical difficulty, it is clear that the relief can be granted in such a fashion that the spirit of the ordinance will be observed and the public safety and welfare secured.

It is the finding of the Hearing Examiner that the Applicants have met the burden. Therefore, it is the recommendation of the Hearing Examiner that the requested variances be approved, subject to the following conditions:

1. The Applicants shall submit a preliminary plan to the Department of Planning and Zoning for review and approval.
2. The Applicant shall record a final plat among the Land Records of Harford County.
3. The Applicant shall deed the 30 foot road improvement right-of-way across their frontage to Harford County.
4. A common drive agreement shall be recorded with the final plat.
5. The parcel shall not be further subdivided until the Applicant is able to secure adequate road frontage as required by the Code.

Date      JULY 9, 1999

L. A. Hinderhofer  
Zoning Hearing Examiner